SUPREME COURT OF THE UNITED STATES.

No. 417.—October Term, 1925.

The Texas & Pacific Railway Co., Appellant, *vs.* Gulf, Colorado & Santa Fe Railway Co.	Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

[March 1, 1926.]

Mr. Justice Brandeis delivered the opinion of the Court.

Transportation Act, 1920, c. 91, § 402, 41 Stat. 456, 477-8, provides, Paragraph (18): ". . . no carrier by railroad subject to this Act shall undertake the extension of its line of railroad . . unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction . . . of such extended line . . ." Paragraph (22): "The authority of the Commission [so] conferred . . . shall not extend to the construction . . . of spur, industrial, team, switching or side tracks, . . . to be located wholly within one State . . ." Paragraph (20): "Any construction . . . contrary to the provisions . . . of paragraph (18) . . . may be enjoined by any court of competent jurisdiction at the suit of . . . any party in interest."

This suit was brought by the Texas & Pacific Railway Company[1] in the federal district court for southern Texas to enjoin the Gulf, Colorado & Santa Fe Railway Company from constructing wholly within that State projected trackage, sometimes called the Hale-Cement Line. The bill alleges that the line is, within the meaning of the above provision, an extension of the defendant's railroad; that the prescribed certificate from the Interstate Commerce Commis-

[1]The suit was begun by Lancaster and Wallace, receivers of the corporation. The receivership terminated before entry of the final decree in the District Court; and the corporation was substituted as plaintiff.

sion has not been secured; and that operation of the line will result in irreparable injury to the plaintiff, because it will divert to the Santa Fe traffic which would otherwise be enjoyed by the Texas & Pacific. By answer the defendant challenged the jurisdiction of the court, insisted that the line is merely an industrial track, and asserted that the plaintiff is barred by laches. After a full hearing, the District Court entered a final decree enjoining the construction or operation of the line unless and until the prescribed certificate should have been obtained. 298 Fed. 488. The case was first brought to this Court by the Santa Fe on constitutional grounds by direct appeal under § 238 of the Judicial Code. Because no substantial constitutional question was presented, this Court transferred it to the Circuit Court of Appeals for the Fifth Circuit, 266 U. S. 588. There the decree of the District Court was reversed. 4 F. (2d) 904. The second appeal to this Court was then taken by the Texas & Pacific under § 241 of the Judicial Code; and the case was docketed here on May 5, 1925. The three objections to granting relief which had been set up in the answer were renewed here.

First. The Santa Fe contends that the decree of the District Court was properly reversed, because the Texas & Pacific had not secured a determination by the Interstate Commerce Commission that the projected line constitutes an extension. It is admitted that where projected tracks would confessedly constitute an extension and no certificate has been obtained, a court may enjoin construction, although such prior determination by the Commission was not made or sought. The claim is that where the defendant asserts that the proposed tracks do not constitute an extension, the Court must, under the doctrine of *Texas & Pacific Ry. Co.* v. *American Tie & Timber Co.*, 234 U. S. 138, and *Northern Pacific Ry. Co.* v. *Solum*, 247 U. S. 477, 483, either dismiss the bill because it is without jurisdiction, or postpone action because it is without power to proceed, unless and until a determination by the Commission of the controverted question shall have been made. It is argued that the issue whether tracks constitute an extension presents an administrative question; that the Commission has power to decide it, because Congress, by conferring authority to determine whether an extension is compatible with the public interest, has by implication conferred authority to determine also the subordinate question whether a proposed track constitutes an extension; that if

the Commission finds the track to be an extension, it may under its general powers make an order requiring the carrier to cease and desist from construction and operation unless and until the prescribed certificate is obtained; and that, as the Commission has such primary jurisdiction, its aid must have been invoked before a court can grant relief.

To this argument the provisions of the Act afford a conclusive answer. Paragraph 18 prohibits construction of an extension without obtaining the certificate. Paragraphs 19 and 20 provide that a carrier desiring to construct one may apply for the certificate and prescribe the method of proceeding. Whenever such an application is made, the Commission may pass incidentally upon the question whether what is called an extension is in fact such;[2] for if it proves to be only an industrial track, the Commission must decline, on that ground, to issue a certificate.[3] A carrier desiring to construct new tracks does not by making application to the Commission, necessarily admit that they constitute an extension. It may secure a determination of the question, without waiving any right, by asserting in the application that in its opinion a certificate is not required because the construction involves only an industrial track.[4] But a party in interest who is opposed to the construction is not authorized by the Act to initiate before the Commission any proceeding concerning the project. If application for a certificate has been made, he may appear there in opposition. If no such application has been made, paragraph 20 affords him the only remedy. That remedy is both affirmative and complete.

The function of the court upon an application for an injunction under paragraph 20 is a very different one from that exercised by the Commission when, having taken jurisdiction under paragraphs 19 and 20, it grants or refuses a certificate. The function confided in the Commission is comparable to that involved in a determination of the propriety or application of a rate, rule or practice. It is the exercise of administrative judgment. Where the matter is of that character, no justiciable question arises ordinarily until the Commission has acted. Compare *Great Northern Ry.*

[2]See Application of Atlanta & St. Andrews Bay Ry. Co., 71 I. C. C. 784, 792; Operation of lines by Coal River & Eastern Ry. Co., 94 I. C. C. 389, 393.

[3]See Abandonment of line of Missouri Pacific R. R., 76 I. C. C. 635.

[4]See Construction of line by Delaware, Lackawanna & Western R. R., 94 I. C. C. 541.

Co. v. *Merchants Elevator Co.*, 259 U. S. 285, 295. The function of the Court upon the application for an injunction is to construe a statutory provision and apply the provision as construed to the facts. The prohibition of paragraph 18 is absolute. If the proposed track is an extension and no certificate has been obtained, the party in interest opposing construction is entitled as of right to an injunction. The issue presented to the court by a denial that the proposed trackage is an extension does not differ in its nature from that raised when the denial is directed to the allegation that the defendant is an interstate carrier. Compare *Smyth* v. *Asphalt Belt Ry. Co.*, 267 U. S. 326, 328-9. If the facts are agreed, the question is one of law. If they are not agreed, the court must find them. In the case at bar, the District Court, having jurisdiction generally of the parties and of the subject matter, was called upon to determine whether an allegation in the bill, essential to the cause of action, was established. This, the court clearly had power to do. Moreover, even if the question presented were, as contended, properly one of jurisdiction, the objection urged could not prevail. Every court of general jurisdiction has power to determine whether the conditions essential to its exercise exist.

Second. The facts on which the Santa Fe contends that the proposed line is merely an industrial track are undisputed. Dallas is a large interior city. The Texas & Pacific extends through it and beyond in a general westerly direction; the Santa Fe in a general southwesterly direction. Both lines have been operated for many years. Along the Texas & Pacific, commencing at a point 2½ miles west of the city and extending westward about 2½ miles further, lies territory known as the Industrial District. To its development the facilities and services furnished by the Texas & Pacific have been essential. In it are cement works, oil refineries and metal works. The traffic moves in carload lots. All the industries are either located on its right of way or connect with it by spurs. To serve the plants that carrier has long switches and assembling tracks. No other railroad has any direct connection with any of these industries. Their traffic from or destined to the Santa Fe or other lines is interchanged by the Texas & Pacific at points on its line distant from these industries from 12 to 30 miles. Thus, the Texas & Pacific receives either the whole or a part of

the revenue on all the traffic of the district—the richest freight-producing territory in all Texas.

The Santa Fe has no branch line running near to, or in the direction of, any part of the Industrial District. Hale is a station on its road. The proposed line is to begin at Hale, where storage and assembling yards are to be located, and is to end in the Industrial District, near the Texas & Pacific right of way. The air-line distance from Hale to the proposed terminus is only 3¼ miles; but the length of line is 7½ miles, besides spurs, sidings and other subsidiary tracks. The greater length is necessitated in part by topographical conditions. These are such that the cost of construction is estimated at $510,000. There is to be one under crossing, where the new line intersects an interurban line, another where it intersects a highway. There are to be two small trestles and numerous fills and cuts. In some respects the character of the construction is that commonly used for industrial tracks. No intention appeared to ballast the track save in stretches where the material was bad. Second hand 75-pound rails, lighter than those commonly used by the Santa Fe, are to be laid. But these are heavier than those used on some of its branches. The ruling grade of the Hale-Cement Line is that prevailing on the Santa Fe branch line running out of Dallas to Paris and Cleburne with which it is to connect. The right of way averages 100 feet; and it is to be fenced on both sides for its full length.

No industry is now located along the proposed line between Hale and the Industrial District. The territory adjacent to that part of the line does not now produce any freight tonnage. The Hale Cement Line was projected by the Santa Fe in order to reach on its own rails the six plants within the district which lie south of the Texas & Pacific Railroad. These furnish 80 per cent. of the traffic of the District. If enabled thus to tap it direct, the Santa Fe can secure a part of the strictly competitive business, and can eliminate the division of rates with the Texas & Pacific on all freight of the District received from or destined to the Santa Fe lines, which is now necessarily handled as inter-line traffic. The freight revenues which the Santa Fe would thus obtain and divert from the Texas & Pacific are estimated at more than $500,000 a year. No plant now served by the Texas & Pacific lies directly on the proposed line. They are so located that the Santa Fe must, in order to reach them, build in each case a spur track to the plant

from the Hale-Cement main line, although it describes a curve, due in part to the desire to connect with each of these plants. The Santa Fe must, in order adequately to perform the transportation service, also build near the industries two side tracks, one 1,200 feet the other 1,500 feet in length.

The Hale-Cement Line is clearly not a spur in the sense in which that word is commonly used. It presents some of the characteristics of a branch; and a branch is clearly an extension of a railroad within the meaning of paragraph 18. The Santa Fe contends that it constitutes an industrial track within the meaning of paragraph 22, because the line is to be constructed solely for industrial purposes. It shows that, according to the plans, the general public is not to be served; that, except at Hale, there will be no public station for the receipt or delivery of freight; no telegraph service; no express, mail or passenger traffic; that the transportation between Hale and the industries will be confined to carload freight; that it will be conducted as a switching service for which no charge will be made; and that the Hale rate will apply to all traffic on the projected line. It argues that a branch is a line serving one or more stations beyond the point of junction with the main line or another branch, and to or from which stations regular tariff rates are in effect; that an industrial track is a line constructed to serve or reach industries over which regular scheduled passenger or freight train service is not performed and for transportation over which only a switching charge, if any, is made; and that neither the length of the line, nor the character of the construction, can convert into a branch a line of the nature described.

In support of its contention that the proposed line constitutes an industrial track, the Santa Fe cites instructions differentiating branches from spurs, which are given by the Interstate Commerce Commission in forms long prescribed for accounting purposes. It points also to uses made of these terms in other connections by courts,[5] by the Commission, and by state legislatures. A truer guide to the meaning of the terms extension and industrial track, as used in paragraphs 18 to 22, is furnished by the context and

[5]Compare Los Angeles Switching Case, 234 U. S. 294; Detroit & Mackinac Ry. Co. *v.* Michigan Railroad Commission, 240 U. S. 564; Chicago, Milwaukee & St. Paul Ry. Co. *v.* Minneapolis Civic & Commerce Association, 247 U. S. 490, 501.

by the relation of the specific provisions here in question to the railroad policy introduced by Transportation Act, 1920. By that measure, Congress undertook to develop and maintain, for the people of the United States, an adequate railway system. It recognized that preservation of the earning capacity, and conservation of the financial resources, of individual carriers is a matter of national concern; that the property employed must be permitted to earn a reasonable return; that the building of unnecessary lines involves a waste of resources and that the burden of this waste may fall upon the public; that competition between carriers may result in harm to the public as well as in benefit; and that when a railroad inflicts injury upon its rival, it may be the public which ultimately bears the loss. See *Railroad Commission* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563; *The New England Divisions Case*, 261 U. S. 184; *The Chicago Junction Case*, 264 U. S. 258; *Railroad Commission* v. *Southern Pacific Co.*, 264 U. S. 331. The Act sought, among other things, to avert such losses.

When the clauses in paragraphs 18 to 22 are read in the light of this congressional policy, the meaning and scope of the terms extension and industrial track become clear. The carrier was authorized by Congress to construct, without authority from the Commission, "spur, industrial, team, switching or side tracks . . . to be located wholly within one State." Tracks of that character are commonly constructed either to improve the facilities required by shippers already served by the carrier or to supply the facilities to others, who being within the same territory and similarly situated are entitled to like service from the carrier. The question whether the construction should be allowed or compelled depends largely upon local conditions which the state regulating body is peculiarly fitted to appreciate. Moreover, the expenditure involved is ordinarily small. But where the proposed trackage extends into territory not theretofore served by the carrier, and particularly where it extends into territory already served by another carrier, its purpose and effect are, under the new policy of Congress, of national concern. For invasion through new construction of territory adequately served by another carrier, like the establishment of excessively low rates in order to secure traffic enjoyed by another, may be inimical to the national interest. If the purpose and effect of the new trackage is to extend substantially the line of a carrier

into new territory, the proposed trackage constitutes an extension of the railroad within the meaning of paragraph 18, although the line be short and although the character of the service contemplated be that commonly rendered to industries by means of spurs or industrial tracks. Being an extension, it cannot be built unless the federal commission issues its certificate that public necessity and convenience require its construction. The Hale-Cement Line is clearly an extension within this rule.

Third. The Santa Fe contends that the judgment denying relief was proper also because the Texas & Pacific had been guilty of laches. This defense was not passed upon by the Court of Appeals. The District Court overruled it as unsupported in fact, and also on the ground that a plaintiff suing under paragraph 20 represents the public as well as private interests and that, hence, a plaintiff's laches cannot operate as a bar. We need not determine whether the latter ground is sound; for the facts do not warrant a finding of laches. The Santa Fe gave no publicity to its purpose. It had purchased some of the right of way before the Texas & Pacific learned that the line was planned. The latter protested immediately to both the state and the federal commissions and insisted that the proposed line constituted an extension. The Santa Fe, having been advised by the Interstate Commerce Commission of the Texas & Pacific protest, had some correspondence with the Director of Finance. We need not discuss its import. The Santa Fe did not file an application for a certificate of public necessity and convenience. It continued its purchase of the right of way despite the Texas & Pacific protests. It made the contract for construction of the line after the commencement of the suit. It proceeded with the construction until stopped by the injunction. It acted at its peril.

In its appeal to the Circuit Court of Appeals the Santa Fe assigned as error that the decree entered was too broad or was indefinite. If the objection is well founded, the error may be cured by application to the District Court.

Reversed.

Mr. Justice McReynolds dissents on the ground that the question should have been first submitted to the Interstate Commerce Commission.